IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14129 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GRASIM INDUSTRIES LIMITED

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 14129 of 2003

MR PARESH M DAVE for Petitioners

MS DHARMISHTA RAVAL for Respondents

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 12/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Leave to amend prayer clause.

2. Rule.

Ms. D.N. Raval, learned Senior Standing Counsel for the Central Government, waives service of notice of rule on behalf of the respondents.

In the facts and circumstances of the case, the petition is taken up today for final disposal.

3. What is challenged in this petition under Article 226 of the Constitution is the final assessment of total 12 bills of entry, details of which are given in the petition and also in prayer clause 9 (A) of the petition.

In view of the order that we propose to pass, it is not necessary to set out all the facts in detail.

Suffice it to state that the petitioners have filed 18 bills of entry with regard to import of coal made by the petitioner company during the period from April to November 2001. The Customs authorities provisionally assessed all the bills of entry by loading elements of landing charges (1% of the value) and Rs.25/= per M.T. by way of miscellaneous charges. The petitioner company paid up the charges on the ground that it needed the imported cargo urgently. The petitioners thereafter requested the authorities to finalise the assessment. Since there was delay on the part of the respondent authorities, the petitioners approached this Court by filing Special Civil Application No.9384 of 2002 for fianlisation of bills of entry. On 17.1.2003 this Court disposed of the petition by recording statement of the respondents that the bills of entry will be finalised within eight weeks.

The petitioners received letters dated 3.3.2003 and 7.3.2003 from the Superintendent of Customs, Jamnagar, respondent No.3 herein, proposing to enhance the value of the imported goods and the petitioners were also informed that if the petitioners desired to make any submission in this regard, the petitioners may do so before the Assistant Commissioner of Customs as otherwise the amount calculated in the said letters will have to be paid by demand draft. The Superintendent of Customs also simultaneously called upon the petitioners to furnish certain details about demurrage charges paid by the petitioners. On 4.3.2003 the petitioners submitted the details of demurrage paid by the petitioner company. On 6.3.2003 and 15.4.2003 the petitioners also submitted

replies to the Assistant Commissioner of Customs, Jamnagar. However, the petitioners are now served with 12 bills of entry assessed by the Superintendent of Customs, Jamnagar, respondent No.3 herein, by communication dated 13.3.2003, Annexure G, informing the petitioners that keeping in view the deadline given by the High Court for finalising provisionally assessed 18 bills of entry, 12 bills of entry have been finalised. According to the petitioners, their shipping agent has received the above referred 12 bills of entry in the first week of August 2003.

4. The said assessment made by the Superintendent of Customs has been challenged mainly on the ground that the competent authority to make assessment was the Assistant/Deputy Commissioner of Customs as stated by the Superintendent of Customs, Jamnagar himself in communication 3.3.2003 wherein he had stated that if the petitioners desired to make any submission, they may do so before the Assistant Commissioner of Customs, Jamnagar immediately and accordingly the petitioners had submitted their reply on 6.3.2003 (Annexure F).

Mr. Paresh Dave, learned counsel for the petitioners, submits that the assessment is, therefore, required to be set aside.

5. On the other hand, Ms. D.N. Raval, learned senior standing counsel for the Central Government appearing for the respondent authorities, has submitted that since the petitioners had not submitted anything in writing to the Superintendent of Customs, Jamnagar, he proceeded on the footing that the petitioners had nothing to say in the matter and therefore he proceeded with the assessment in order to complete it within the time limit fixed by this Court. It is further submitted that there is no dispute about receipt of the reply by the Assistant Commissioner who did receive the reply dated 6.3.2003 and reminder dated 15.4.2003. The learned senior standing counsel has suggested that in order to save time it would be expedient if the Superintendent's letters dated 3.3.2003 and 7.3.2003 are treated as show cause notices to which the petitioners may reply and thereafter the Assistant/Deputy Commissioner of Customs, Jamnagar, will decide the matter and make assessment of all the bills of entry.

6. Having heard the learned counsel for the parties, it appears to the Court that in view of the fact that the reply given by the petitioners dated 6.3.2003 and 15.4.2003 (Annexure F collectively) were not considered

and the assessment was made by the Superintendent of Customs, Jamnagar, it would be just and proper to set aside the said assessment as contained in Annexure H collectively and direct the parties i.e., the petitioners as well as respondents, to treat the communication dated 3.3.2003 and 7.3.2003 of the Superintendent of Customs, Jamnagar as show cause notices to which the petitioners shall reply within one month from today and thereafter the Assistant/Deputy Commissioner of Customs, Jamnagar shall decide the matter after giving the petitioners an opportunity of being heard. It is directed accordingly.

The Assistant/Deputy Commissioner of Customs, Jamnagar, shall decide the matter expeditiously and preferably within three months from the date of receipt of the reply.

Subject to the aforesaid directions, Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)